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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,015	10/03/2001	Paul Vegliante	2112-342.1 US	2684

7590 07/03/2007

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EXAMINER	
HAMILTON, ISAAC N	

ART UNIT	PAPER NUMBER
3724	

MAIL DATE	DELIVERY MODE
07/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary	Application No.	Applicant(s)	
	09/970,015	VEGLIANTE ET AL.	
	Examiner	Art Unit	
	Isaac N. Hamilton	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 April 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,5,11-23,38-40 and 42-44* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 5, 11-23,38-40 and 42-44* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 11, 12-14, 16, 20, 22 and 23 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over 1, 8, 9, 11, 13, 14 and 19 of copending Application No. 09/741,521. Although the conflicting claims are not identical, they are not patentably distinct from each other because they include similar limitations.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 5, 11-17, 20-23, 40, 42, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas, Jr. et al (5,440,961), hereafter Lucas, in view of Wankow (3,549,066). Lucas discloses everything as noted in Diagram 1; channel 13; bottom edge of upper portion of blade housing protrudes on either side of blade in figure 2; end surface of upper portion is rounded and inclined upward as shown in figure 2; tracking device 34; tubular base 31; channel has tubular shape as shown in figure 3; left section 39; right section 35; rivet 37; aperture 51; blade angled from bottom edge at 30 degree angle as shown in figure 2; depression 7; rear edge 5; cover of a carton 9; a material which provides an attraction to the plastic wrap in column 3, lines 6-8.

Lucas does disclose a material which provides an attraction to the plastic wrap, but it is not necessarily made from polyvinyl chloride with plasticizer. However, Wankow teaches material 30 which provides an attraction to the plastic wrap as recited in column 1, lines 30-45, and in column 2, lines 70-72, with plasticizer as recited in column 3, lines 36-45. It would have been obvious to provide a material which provides an attraction to the plastic wrap that is made of polyvinyl chloride with plasticizer in Lucas as taught by Wankow because one of ordinary skill in the art recognizes that the materials are equivalent for the same purpose. Note that the material in Wankow is smooth and non-porous in the figures.

The combination of Lucas and Wankow discloses the claimed invention except for the amount of plasticizer in the polyvinyl chloride being at least 10 percent. It would have been obvious to one of ordinary skill in the art to provide at least 10 percent plasticizer in the PVC for the purpose of cutting efficiency for different polymeric films, such as PVC or polyethylene. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Regarding claims 1, 16, 22 and 23, coextrusion is a process that is well known in the manufacturing of Acrylic and other polymers as evidenced by Boda (5,524,515), and does not further limit the structure. The structure of the rails in the combination of Lucas and Wankow is the same as the structure of the rails when coextrusion is used to produce the rails.

With respect to the rail being PVC and the housing being acetal, the courts have long held that choosing which material to use is simply a matter of design choice based on availability and economics. For instance, Urion et al (4,210,043) has a blade housing formed of acetal, and Tsai (5,036,740) has a base rail formed of PVC. Since Urion discloses Acetal to be cheap, and since PVC is widely known to be durable and cheap, it would have been obvious to use PVC and Acetal in the combination in order to support the elements of the film cutter.

5. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Lucas and Wankow as applied to claims 1, 5, 11-17, 20-23, 40 and 44 above, and further in view of Keene et al (3,277,760), hereafter Keene. Lucas discloses channel 13; pair of rails, upper section and lower section shown in Diagram 1 below. Lucas does not disclose a protrusion and does not disclose a blade housing that snap fits into a protrusion. However, Keene teaches protrusion 18, 29, 40, and discloses blade housing 40 that snap fits into the protrusion. It would have been obvious to provide a blade housing that snap fits into a protrusion in Lucas as taught by Keene in order to prevent the blade housing from sliding out of the elongated rail base.

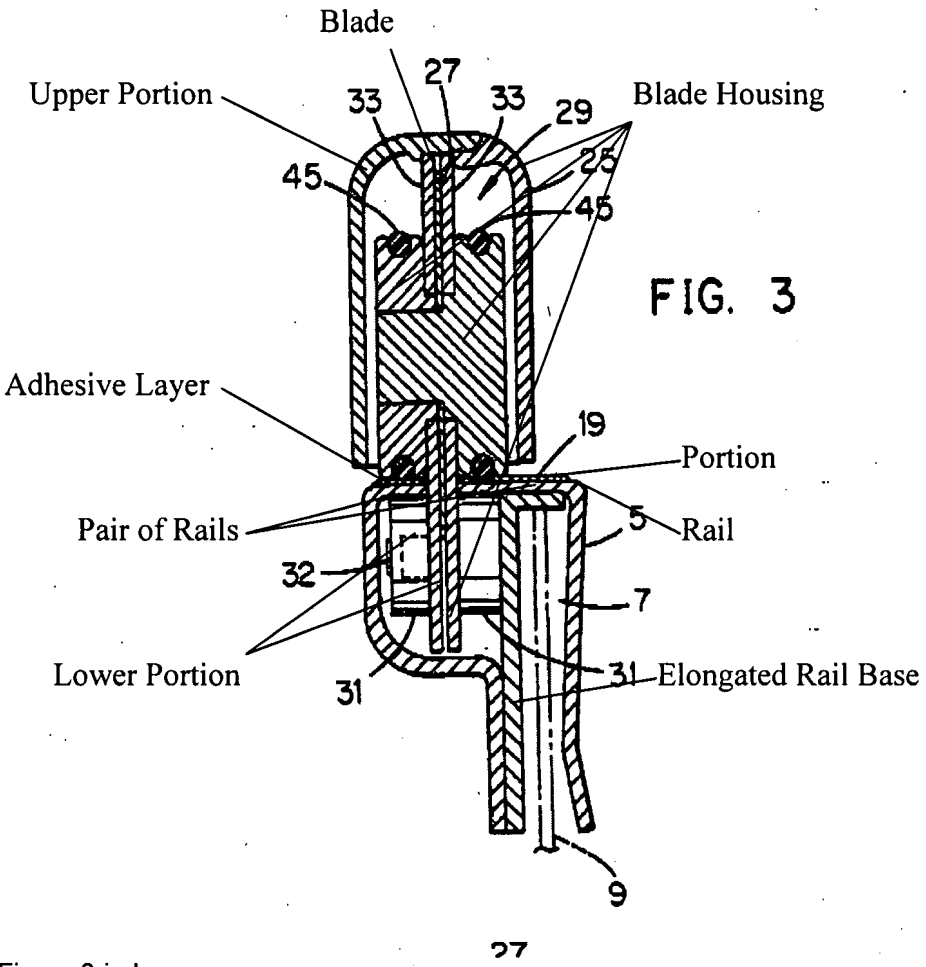

Diagram 1. Figure 3 in Lucas.

6. Claims 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Lucas, Jr. and Wankow, as applied to claims 1, 5, 11-17, 20-23, 40, 42, 43 and 44 above, and further in view of Boda. The combination discloses everything as noted above, but does not disclose molding the rails by the method of extrusion. However, Boda teaches molding rails by extrusion in column 2, line 54. It would have been obvious to mold the rails in the combination as taught by Boda in order to make rails of varying lengths with the same profile.

Response to Arguments

7. Applicant's arguments filed 04/02/07 have been fully considered but they are not persuasive. Applicant asserts that combining the "vinyl spots" of Wankow that have cling properties with the rigid slide cutter of Lucas, Jr. would not yield a functioning apparatus because the amount of cling provided by the "vinyl spots" is insufficient to hold the plastic wrap in place. However, the "vinyl spots" in Wankow provide more than sufficient cling to the plastic wrap that is required for the slide cutter of Lucas, Jr.. Both cutting procedures for the plastic wrap require similar forces to be applied to the plastic sheet. The cling properties of the "vinyl spots" in Wankow provide enough cling to the plastic sheet when combined with Lucas, Jr..

Applicant asserts that Wankow does not teach or suggest a rail formed of a first material of rubber, polyvinyl chloride comprising at least 10% plasticizer, silicon elastimer and combinations thereof coextruded with a second material formed of rigid PVC. However, it would have been obvious to one of ordinary skill in the art to provide at least 10 percent plasticizer in the PVC for the purpose of cutting efficiency for different polymeric films, such as PVC or polyethylene. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Such a modification would have involved a mere change in the size of a component. Furthermore, coextrusion is a process that is well known in the manufacturing of Acrylic and other polymers as evidenced by Boda, and does not further limit the structure. The structure of the rails in

the combination of Lucas and Wankow is the same as the structure of the rails when coextrusion is used to produce the rails.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 571-272-4509. The examiner can normally be reached on Monday through Friday between 8am and 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

IH
June 25, 2007

KENNETH E. PETERSON
PRIMARY EXAMINER